

**Notice of Allowability**

Application No.

09/525,867

Examiner

Delia M. Ramirez

Applicant(s)

YUE ET AL.

Art Unit

1652

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to decision by BPAI.
2. ☒ The allowed claim(s) is/are 3-6 and 8.
3. ☒ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 3/15/00, 3/19/01
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

## **DETAILED ACTION**

### ***Status of the Application***

Claims 3-6, 8, 10-14, 23, 26-36 are pending.

The decision rendered by the Board of Patent Appeals and Interferences on 11/26/2004 vacates the Examiner's rejection of claim 31 under 35 USC 112, first paragraph and enters a new rejection of claim 31 under 35 USC 112, second paragraph.

The period for seeking court review of the decision by the Board of Patent Appeals and Interferences rendered 11/26/2004 has expired and no further action has been taken by appellant. The proceedings as to the rejected claims are considered terminated; see 37 CFR 1.197(c). The application will be passed to issue on allowed claims 3-6, and 8. In accordance with MPEP 1214, withdrawn claims 10-14, 23, 26-30, 32-36 and rejected claim 31 are hereby cancelled. Prosecution is closed.

### ***Examiner's Amendment***

1. An informal Examiner's amendment to the specification appears below. This amendment is to add a specific reference to the prior application(s) in the first sentence of the specification (37 CFR 1.78).

2. Please enter the following amendments to the specification as follows:

3. In page 1, immediately after the title, please insert the following sentence:

This application claims benefit of U.S. provisional Application No. 60/124,655 filed on 03/16/1999.

4. An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

5. Please cancel claims 10-14, 23, 26-36.

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*Reasons for Allowance*


6. The following is an Examiner's statement of reasons for allowance. Although the prior art cited by the Examiner (Hyslop et al.) discloses a nucleic acid encoding the PSST subunit gene of human NADH-ubiquinone oxidoreductase, wherein said oxidoreductase is 99.1% sequence identical to the polypeptide of SEQ ID NO: 1, the Examiner has found no teaching or suggestion in the prior art directed to a nucleic acid encoding the polypeptide of SEQ ID NO: 1 or a nucleic acid comprising SEQ ID NO: 9. Therefore, claims 3-6 and 8 directed to nucleic acids encoding the polypeptide of SEQ ID NO: 1, the nucleic acid of SEQ ID NO:9, vectors, host cells, and a method to recombinantly produce the polypeptide of SEQ ID NO: 1, are allowable over the prior art of record.

*Conclusion*

7. Claims 3-6 and 8 are allowed.
8. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Delia M. Ramirez whose telephone number is (571) 272-0938. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM.
- If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Ponnathapura Achutamurthy can be reached on (571) 272-0928. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Delia M. Ramirez, Ph.D.  
Patent Examiner  
Art Unit 1652

DR  
March 18, 2005

  
REBECCA E. PROUTY  
PRIMARY EXAMINER  
GROUP 1800  
1600